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LITTLE BLUE VALLEY SEWER DISTRICT

March 19, 2008

Mr. Philip Schroeder
Chief, Water Quality Monitoring and Assessment Section
Missouri Department of Natural Resources
PO Box 176
Jefferson City, MO 65102

Re: Comments on Antidegradation Implementation Procedures Draft Regulatory Impact Report

Dear Mr. Schroeder:

Little Blue Valley Sewer District ("District") has reviewed the amendment to 10 CSR 20-7.031 incorporating the antidegradation procedures by reference, and related fiscal note and submits the following comments for the record. The District has participated in the stakeholder meetings on the proposed Antidegradation Implementation Procedures and the Regulatory Impact Report developed by the Missouri Department of Natural Resources. In summary, the implementation of these regulations will result in initial financial increases to Missouri wastewater treatment permit holders, substantially unanticipated costs for both small and large wastewater treatment plants, and will greatly impact the possible implementation of expanded regional wastewater treatment facilities.

The antidegradation implementation procedures were not developed for wholesale treatment entities serving satellite systems such as the District. The regulatory interplay between wholesale systems and satellite communities continues to evolve nationally. These procedures will undoubtedly lead to unique issues in the District's antidegradation reviews. Accordingly, the Department must afford flexibility in applying these procedures to the District's antidegradation reviews when such issues arise. Below, LBVSD has set out its comments with the above underlining premise.

I. FISCAL IMPACT ON PUBLIC ENTITIES

The aggregate fiscal impact of antidegradation reviews on all facilities is estimated too low. The current fiscal note states that the aggregate impact to public facilities will be $2, 384,795 per year. This figure is based on the average number of water quality review sheets performed annually since 2005 which was 42. Water quality permitting reviews will likely increase in years to come due to increases in economic activity and the number of water quality reviews required by the Department. This will increase the number antidegradation reviews and corresponding costs to public entities.

Furthermore, the fiscal note does not quantify several significant categories of costs related to this new requirement, including costs related to:

1) hiring additional personnel or third-party contractors to comply with this rule,

2) modeling associated with the antidegradation analysis,

3) implementing additional technology beyond what is currently contemplated by existing rules, and

4) costs related to inflation and loss of revenues caused by potential delays in permit issuance

The fiscal note should reflect that the impacts will be greater than the figure projected.

Missouri's law prohibits new or increased mandates imposed upon public entities after 1980 without proportional funding for the entities to comply with such mandates. *See* Article X, Section 16. Antidegradation procedures are new to Missouri permit holders. This newly enacted regulation and corresponding procedures will impose significant costs to public entities without corresponding funding from the Department. In particular, the procedures require applicants to collect background water quality data, perform alternatives analysis, conduct modeling, and compile information necessary for the Department to determine if a proposed degradation has socio-economic importance. The resulting costs of collecting this data will be significant. The State has neither funded nor made an appropriation to public entities to fund the cost of this data collection and analysis.

Because Missouri law requires the Department to provide proportionate funding to public entities for any newly required activity, the Department should seek resources to reduce the fiscal impact on public entities and reprioritize its staffing to conduct antidegradation reviews where necessary. Nether existing federal or state law requires public entities to bare the costs of antidegradation reviews. The Department must still comply with Missouri law in imposing these requirements.

II. REGULATORY IMPACT REPORT

The District makes the following comments on the underlying Regulatory Impact Report related to this proposed amendment.

A. Analysis of No-Discharge Alternatives

If the District should determine that no discharge is an alternative for future facilities, the process of applying for the option would involve costs including a search for developing technologies that would result in no discharge. The Districts' costs associated with performing an alternative analysis under these procedures will include, at a minimum, 1) consultant costs for conducting the review for non-discharging alternatives; 2) reviewing the practicability, economic efficiency, and affordability of each treatment alternative identified; 3) calculating the costs to design and construct those treatment alternatives; and 4) annualized operation and maintenance expenses. Clearly, this alternative offers very little in the way of a treatment option.

B. Determining Existing Water Quality of the Receiving Waterbody

This step will require the District to gather data on the current water quality in the waters both upstream and downstream of the discharge to determine its existing water quality. For the Missouri River it is not only the repetitious costs of sampling but also a liability and safety issue. The cost of performing this phase will depend on the amount of available data from previous sampling efforts and on the complexity of the probable chemical reactions within the receiving water (i.e. assimilation models, synergistic reactions, bioaccumulation, etc.). The District has been doing such sampling over the past few years, however, the impact and results may only have to be redone under these provisions. Clearly, over the coming years costs will escalate the more data that is required. Costs will rise even more depending if modeling is required or a new model is developed by the Department and is required to determine the pollutant load. Among others, the District's expenses will include the cost of hiring consultants and subcontractors to perform these evaluations, in-house personnel for collecting the data costs for sample analysis, as well as consultants to evaluate the data, the modeling and the ultimate determination of the impact. Smaller communities, including the Districts subdistrict, Middle Big Creek, will be especially impacted by this type of increased cost. The critical issue is the ability of the reviewer of the information at the State level to use their education to interpret and understand the information so that the cost to the public is not compounded with additional requests for information.

C. Analysis of Minimally Degrading Alternatives

This step involves searching for technologies that would result in minimal degradation, i.e. the use of less than 10% (or 20%, as applicable) of the available assimilative capacity in the receiving water body. The cost associated with performing this process will include, at a minimum, consultant costs for 1) conducting the review of minimally degrading alternatives; 2) reviewing the practicability, economic efficiency, and affordability of each treatment alternative identified; and 3) calculating the costs to design and install these treatment alternatives. Again it is important for the reviewing agency (MDNR) to have the expertise to evaluate the baseline data and not increase the cost to communities for additional or updated data because of the length of time for review of the data submitted.

D. Documenting Socio-Economic Importance

When non-discharging and minimally-degrading alternatives are not practicable, economically efficient, and affordable, the District will be required to research and collect information regarding the social and economic benefits that would result if the discharging activity were permitted. Given the District's composition and its statutory jurisdiction, this element is almost unattainable. In a broader context it is also important to have general economic information on the public data meet the criteria so that sewer districts that do not have nor in some instances cannot obtain the economic information available to a city can still use this provision. Also, it is important to not use affordability methodology developed for different environmental programs to be used if not reflecting the actual information which is needed. One element in the District’s evaluation that is critical is low-income data's inclusion as part of the data points. In urban areas as well as rural, the impact is critical. As anticipated, the cost is based upon the specificity of the rule. Clearly, the cost will increase the District's costs to gather information regarding unemployment, tax revenue, property values, housing market trends, and other relevant community growth trends. With the unincorporated areas of the District, this may be difficult to acquire.

E. Additional Costs

The District's costs will increase if the Department's final antidegradation review requires a more advanced treatment alternative than what the Department would have accepted under its review prior to the implementation of the antidegradation procedures. For the District, the impact of these requirements on water quality may be undetectable given the discharge is to the Missouri River. With the majority of the pollution in the Missouri River attributable to non-point sources, forced improved wastewater effluent quality will have no measurable effect on the river. Increased compliance costs will also include those associated with inflation during the time a project is undergoing an antidegradation review, which could take up to two years.

F. Specific Comments

Section three requires a description of the persons who will most likely be affected, including those who will bear the costs of the proposed rule and persons that will benefit from the proposed rule. The Department correctly acknowledges that the costs will be borne by the applicant, but assumes that costs may be passed on through rate increases. Compliance costs may not always be readily passed on as the Department assumes. In all circumstances, consideration must be given to the institutional framework within which service is provided. In the District's case, wholesale customer rates are governed by contracts that effectively divide the costs to customers by the percentage of wastewater flow. The District must pass all costs on to its customers. The District does not have the capability of increasing service fees to pay for increased treatment.

In Section three, the Department speculates that no significant fiscal impacts have been reported in other states because applicants have not seen significant changes in their efforts to obtain permits. The Department has no basis for this presumption. The lack of information relating to fiscal impacts nationwide most certainly varies. Accordingly, the Department should simply state, "Based on the information available, MDNR has found no reported fiscal impacts in other states." There should be information available through national resources or EGOS related committees, but clearly this would require additional time to put together and the MDNR is required to have these regulations in place expeditiously.

Section seven requires a determination of whether there are less costly or less intrusive methods for achieving the proposed rule. The Department inaccurately states that the proposed procedures do not implement burdens other than those required under federal law. While it is true that antidegradation implementation procedures are a component of federal regulation, it is not accurate to state that Missouri's procedures cannot extend those requirements. Neither federal or state antidegradation regulations require the permittee to bear the cost of an antidegradation review. It is possible that the Department could use its internal staff to gather the information required under the antidegradation review where funding allows. Shifting this cost to the Department would certainly provide a less costly method of complying with this rule.

Section nine requires an analysis of both short-term and long-term consequences of the proposed rule. The Department has no basis to presume that, due to the increased time it will take to review and approve permit applications, dischargers will be encouraged to choose the most effective technologies for pollution control without adversely affecting the social and economic vitality of a community. The Department admits having no historical or

parallel information regarding the fiscal impacts of antidegradation reviews. Therefore, it has no basis for this presumption and it should be deleted. The Department also neglects to acknowledge that permittees and communities will lose revenues due to longer permit timeframes. This consequence should be documented.

III. ANTIDEGRADATION IMPLEMENTATION PROCEDURES

A. Existing Water Quality

Background water quality must be determined using representative data compiled by approved quality assurance and quality control procedures. The procedures should recognize that data used by the Department in determining background water quality may be supplemented by the applicant with additional or different data more representative of water quality in the applicable receiving stream segment.

B. Alternatives Analysis

An applicant proposing any new or expanded discharge that would significantly degrade water quality for a Tier 2 pollutant of concern is required to prepare an evaluation of alternatives to the proposed discharge. The purpose of this evaluation is to determine whether or not the proposed discharge is "necessary," i.e., significant degradation does not occur unless no reasonable alternative(s) exists. These alternatives are compared to the controls required to protect existing uses and to achieve the highest statutory and regulatory requirements, i.e., the more stringent of water quality-based limits for existing use protection or technology-based requirements.

The alternatives analysis should entail an evaluation of a range of less degrading and non-degrading alternatives and serve as a basis for selecting a practicable, economically efficient and affordable pollution control alternative. Initially, an alternative should be evaluated to determine if it is effective and reliable. The practicability of alternatives is considered by evaluating the effectiveness, reliability, and potential impacts on the overall natural environment resulting from implementation of the alternatives. Non- and less-degrading alternatives shall be considered effective unless an evaluation to the contrary is provided. The Department's decision in determining practicability should be based upon impacts of the discharge as regulated under federal and state clean water laws. Any information requested by the Department regarding impacts to areas outside the jurisdiction of federal and state clean water laws should not be used as the basis for disapproving a preferred technology option under these procedures.

An analysis of pollution control costs, or economic efficiency, is appropriate so the applicant can consider the optimal balance between water quality benefits and project costs. Opportunity costs may be considered in the estimate of overall cost as appropriate in this step. The *non-binding rule-of-thumb* is that the alternative that is less than 110% to 120% of the base cost of pollution control measures is economically efficient. It is expected that, in general, those alternatives with costs beyond this range of the base cost of pollution control represent the point beyond which increasing costs yield less than proportional increases in water quality.

Finally, following an analysis of economic efficiency, the affordability of the most efficient alternative may be assessed at the applicant's discretion. This assessment may be used to determine if the alternative is too expensive to reasonably implement. This approach results in the selection of the most efficient alternative, while maintaining affordability to the public or private entity. Alternatives are considered affordable if the applicant does not supply an

affordability analysis. This review should consider the overall needs in the community and any relevant factor reflective of the community's ability to absorb additional treatment costs. The costs of a particular alternative should include the full spectrum of requirements to provide wastewater services. If the applicant determines that the most efficient alternative is affordable, then it is the preferred alternative. If the most efficient alternative is not affordable, then the affordability of the next most efficient alternative should be evaluated until an alternative is chosen that is both economically efficient and affordable.

Following the analysis of pollution control alternatives, the alternative that is the most practicable, economically efficient, and affordable should be considered the preferred pollution control alternative. If this alternative results in greater than minimal degradation, the applicant must determine the social and economic importance (SEI) of the discharge according to 10 CSR 7-031.

C. Determining Socio-Economic Importance

The "Municipal Preliminary Screener" (MPS) test as defined in the EPA's Interim Economic Guidance for Water Quality Standards Workbook (1995) should not be used as a means to determine the social or economic importance of a proposed discharge. Typically, the MPS test is used in the context of determining widespread socio-economic impacts under 40 CFR § 131.10(g) and is not appropriate to use for the purpose of determining socio-economic importance. The test is most suitably used by an applicant to demonstrate the affordability of a proposed alternative in the alternatives analysis. Accordingly, this test should be available for use by the applicant under the alternatives analysis section.

To the extent that the MPS is used by the applicant in its alternative analysis, the test may be supplemented or replaced with other appropriate measures. EPA's interim guidance was intended to be flexible and supplemented with other appropriate analytical models. In its April 27, 1995 interim guidance transmittal letter, EPA stated, "The measures outlined in the guidance are not intended to be applied as absolute decision points. States may use other economically defensible approaches in lieu of those suggested in this interim guidance." The procedures should be revised to acknowledge that analytical tests borrowed from EPA guidance or otherwise may not be applicable in all circumstances and should be supplemented or replaced with more representative analytical models where appropriate.

The socio-economic importance tests as drafted is too rigid and should not be based on the "Municipal Preliminary Screener" (MPS) test as defined in the EPA's Interim Economic Guidance for Water Quality Standards Workbook (1995). This test is not required by state or federal law and inherently lacks relevance in determining the socio-economic importance of a proposed discharge. Further limitations of the test includes:

Absence of Financial Planning. The procedures tend to focus on specific costs associated with the implementation of a control alternative using only a snapshot view of current and projected wastewater costs, customer base, and financial conditions. Since the implementation and operation of a control alternative may involve long-term operational changes and multi-year capital investments, financial projections should be based on long-term development of a summary level-financial plan delineating system-wide cash flow requirements and projected wastewater rates.

Capital Financing. Further distortion can occur by calculating the projected debt service, sizing only a single debt issue to characterize affordability of an alternative.

Capital Cost Estimation. Project cost estimates are inherently based on limited information about specific design and construction requirements or prospective costs for contract labor materials. The procedures should recognize that cost estimates invariably include a number of contingencies and allowances and should be adjusted accordingly.

Permittee v. Regional Users. Consideration must be given to the institutional framework within which service is provided in establishing the number of households across which mandated costs are to be absorbed. As in the District's circumstance, wholesale customer rates are governed by contracts that effectively limit or preclude assignment of cost responsibilities to these customers' residential users. The factors considered must explicitly recognize the limitation of wholesale treatment permittees to readily pass on costs related to increased treatment.

Use of Median Household Income (MHI). Use of a median household income value by definition ignores consideration of important diversities across a permittee's served population. This value may be entirely unrepresentative of conditions among selected subgroups or across selected sub-geographies. Because increased wastewater costs are particularly problematic for low income households rather than those earning the MHI, consideration of a permittee's low income population is required to adequately assess financial capability. Also, the use of the MHI focuses solely on residential users. For policy reasons, the impact on commercial and industrial users is equally important. In this regard, the use of the MHI does not address the extent to which wastewater costs compromise the competitiveness of an area's prospects for economic development.

Socio-economic importance determinations should be based only on factors relevant to each community. These factors may include the factors specifically listed in the procedures, but may also include unique factors not listed. Factors considered should be evaluated based on a long-term (20-year) projection to gain a comprehensive understanding of the social or economic value a proposed discharge has to a given community. Finally, as is authorized by some other states, the Department should evaluate whether to allow exemptions for high priority funding areas as determined by state and local agencies or regional expansion plans as developed by Publicly-Owned Treatment Works. *See* Kentucky Waterways Alliance et. al. v. Stephen L. Johnson et. al., 426 F. Supp.2d 612.

D. Nonpoint Source Controls

Nonpoint source controls should only be evaluated in an antidegradation review when they are part of a lawfully-enacted regulatory scheme. Review of nonpoint source controls in the context of a point source NPDES antidegradation review should not delay the completion of the antidegradation review under the NPDES permit or delay the NPDES permit issuance under any circumstance.

E. General Permits

The District supports the Department's approach to assess general permits in a separate workgroup upon each template renewal. Antidegradation reviews for general permits should not be included within these procedures and should be evaluated by a separate workgroup. The workgroup established to develop these procedures is not inclusive of most general permit stakeholders. Since antidegradation reviews on general permits have great widespread impact

on economic progress, general permits should be evaluated carefully and independently to determine the socio-economic importance of allowing discharges through general permits and which general permits quality for a *de minimis* exemption for which an antidegradation review is not required. *See* Kentucky Waterways Alliance et. al. v. Stephen L. Johnson et. al., 426 F. Supp.2d 612. Accordingly, all language specific to the development of general permits should be deleted.

F. 401 Water Quality Certifications

The District supports the Department's proposed approach in reviewing 401-Water Quality Certifications under the antidegradation procedures.

G. Appeals

Antidegradation decisions should be appealable pursuant to sections 644.051 and 621.250, Revised Statutes of Missouri. In most cases, applicants will exercise this appeal right after the Department's decision following the permit public comment period pursuant to 10 CSR 20-6.020. However, because of certain internal agency coordination actions, a preliminary determination of an antidegradation review may be on the record for a long period of time before it is presented for public notice. Due to planning and funding timelines, applicants may need to exercise their right to appeal when it is evident from all prior negotiations that the applicant and Department do not agree on the terms and conditions to be public noticed pursuant to 10 CSR 20-6.020 and consequently, the final permit issued. The applicant should be afforded a non-contested, informal appeal to the Director or authorized delegate before beginning the public notice process of the Department's preliminary determination where such disagreement exists.

Accordingly, the procedures should contain language recognizing this appeal right similar to the following:

> Page 41-- "The applicant may appeal the Water Pollution Program's preliminary antidegradation determination to the Director, or authorized delegate, within 30 days of the applicant's notification. After full consideration of the record, the Director shall either affirm the Program's preliminary decision or return the decision to the Program with recommendations for modification. After such modifications are made consistent with the Director's recommendations, the review shall be public noticed pursuant to 10 CSR 20-6.020. The Department's final decision after the close of the public comment period may be appealed pursuant to sections 621.250, 644.051, Revised Statutes of Missouri and 10 CSR 20-6.020."

The procedures will be incorporated into regulation by reference, making it enforceable as regulation. After the procedures have best implemented for one year, the District requests that the Department evaluate the procedures to assess whether any further modification is necessary. Any such modifications should only then be made after stakeholder involvement.

IV. CONCLUSION

The District appreciates the Department's time in considering these comments. The District reserves the right to offer additional comments in any future public comment period related to this regulation and procedures. Please call me at (816) 796-7660 ext. 123 should you have any questions.

Best regards,

LITTLE BLUE VALLEY SEWER DISTRICT

By:

John D. Reece, P.E.
Executive Director

Attachment

bcc: Missouri Clean Water Commission
Terry Satterlee, Shook, Hardy & Bacon
Aimee Davenport, Lathrop & Gage

Phil Schroeder/WPCP/DEQ/MODNR
03/20/2008 08:01 AM

To: Donna Menown/WPCP/DEQ/MODNR@MODNR
cc:
bcc:
Subject: Fw: Phillip Schroeder letter

----- Forwarded by Phil Schroeder/WPCP/DEQ/MODNR on 03/20/2008 08:01 AM -----

Sarah Garoutte/WPCP/DEQ/MODNR
03/20/2008 07:35 AM

To: Phil Schroeder/WPCP/DEQ/MODNR@MODNR
cc: Linda Mebruer/WPCP/DEQ/MODNR@MODNR
Subject: Fw: Phillip Schroeder letter

This came in through the Clean Water e-mail address.

Sarah Garoutte
Public Information Specialist
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----- Forwarded by Sarah Garoutte/WPCP/DEQ/MODNR on 03/20/2008 07:34 AM -----

"Shoemaker, Charlene R." <CShoemaker@LathropGage.com>
03/19/2008 04:19 PM

To: "Davenport, Aimee" <ADavenport@LathropGage.com>, tsatterlee@shb.com, jreece@lbvsd.org, cleanwater@dnr.mo.gov, melinda.overhoff@dnr.mo.gov, ed.galbraith@dnr.mo.gov, rob.morrison@dnr.mo.gov
cc:
Subject: Phillip Schroeder letter

Please find a copy of the John Reece's March 19, 2008 letter that was sent via fax and hard copy today's date.

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Electronic copy
of letterhead

STATE OF MISSOURI

Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

April 15, 2008

Mr. John D. Reece, P.E.
Executive Director
Little Blue Valley Sewer District
21101 East 78 Highway
Independence, MO 64057-2767

Dear Mr. Reece:

Thank you for your letter transmitting comments from the Little Blue Valley Sewer District (District) dated March 18, 2008, regarding the proposed amendment to Missouri's Code of State Regulations at 10 CSR 20-7.031(2). This proposed rule amendment pertains to the state's antidegradation policy and incorporates, by reference, the Missouri Antidegradation Rule and Implementation Procedure (AIP) adopted by the Missouri Clean Water Commission (CWC) on April 20, 2007.

The District generally mentions the unique situation that wholesale treatment systems will likely face in achieving compliance with the AIP. The department understands the unique situation facing wholesale treatment providers, such as maintaining the agreements between the District and its satellite communities. This hierarchical involvement in the wastewater collection and treatment responsibility creates additional layers in the decision process and requires greater levels of coordination and communication between all entities within the wastewater network.

The AIP does not specifically provide any special provisions for managing these challenges, but some latitude to adapt does exist. For example, the District inquired recently about the options within the AIP to accommodate the long range redirection and consolidation of wastewater collection and treatment in their area. The department feels that we can accept such unique arrangements when the plan meets the fundamental requirements of the state's antidegradation policy and federal rule at 40 CFR 131.12. We encourage the District to continue discussing their long range plans with the department so that we can ensure the AIP supports sound decisions that benefit the environment and enables the involved communities to receive reliable and affordable sewer service through a wholesale network.

The District requests specific verification and/or clarification on the following points to which the department provides a response:

I. Fiscal Impact on Public Entities

The District points out several reasons that the department underestimates the cost to municipalities as a result of the AIP. These reasons include:

- The department's estimate of new or expanding permits is too low.
- Several categories of cost were not considered, such as the hiring of personnel and contractors necessary to comply with the AIP, performing calculations (models) of the effects on water quality on a range of alternatives, the cost of building more advanced treatment as a result of the expanded alternatives analysis and the inflationary cost

Department Response: The department recognizes the limitations in the fiscal note and the District identifies events that may create additional costs for permittees; however, deriving a reasonably accurate estimate is extremely difficult. There is no certainty about the actual number of permits that will be subject to an antidegradation review. The department estimated the work from the record of the number of water quality review sheets written during the past year. This record provides an indication of the number of permits requesting new or expanding discharges and for which the department evaluates for water quality based effluent limitations. The department has not identified any other more reliable source from which to derive an estimate of the work or to estimate the costs.

Without more information or actual estimates of the other potential costs that may be caused by this proposed rule, the department is not able to identify any specific changes appropriate to the fiscal note; however, the District's comments will be contained within the administrative record. These comments broaden the understanding of the events that may lead to additional costs and may provide the readers a greater opportunity to recognize how the rule may impact them.

II. Regulatory Impact Report

The District restated the comments they made in their letter dated September 13, 2007 regarding the Regulatory Impact Report (RIR) that was open for public review and comment from July 16, 2007 to September 14, 2007.

Department Response: Rather than restating our responses to the District's earlier letter regarding the RIR, the Department refers the District to our letter dated October 16, 2007 in which we provide a response to the identical comments made in the District's letter dated September 13, 2007.

III. Antidegradation Implementation Procedures

a. Existing Water Quality

The District requests that the AIP recognize the applicant's option to provide additional data from which existing water quality (EWQ) may be determined.

Department Response: The AIP explains the process for determining EWQ on Pages 16 to 21. When water quality data are necessary to perform an antidegradation review, the AIP encourages the applicants to collect the data. Recently collected data is always preferable to the use of older data or to the use of a modeling approach based on best available information. If an applicant wishes to provide additional or different data to support a determination on EWQ, the data collection must follow adequate quality control and quality assurance procedures. The AIP encourages applicants to jointly develop their sampling plans with the department well in advance of the need for an antidegradation review.

b. Alternatives Analysis

The District provided a summary of the expected process for conducting an alternatives analysis.

Department Response: The AIP supports the approach summarized by the District.

c. Determining Socio-Economic Importance

The District's comments provide ideas on how to ensure an appropriate review of the socio-economic importance of a discharging activity and reveal some of the challenges that applicants may face.

Department Response: The AIP outlines the requirements for determining socio-economic importance on Pages 30 and 31. The importance of a proposed project both socially and economically is determined by the benefits of the project to the community and the project's effect on community's standard of living. The AIP does not outline any specific approach to making this determination. Generally, a socio-economic analysis should explore the project's effect on employment rates, average wages, housing and other community infrastructure needs, the overall environment and opportunity for community improvement or expansion. The department agrees that EPA's Interim Economic Guidance for Water Quality Standards does not provide a good method making this analysis, and the AIP does not support this approach. This guidance is better suited as a method for determining *affordability* of treatment options during the alternatives analysis and is referenced by the AIP when addressing options for determining affordability on Page 27.

While the AIP does not mention the consideration of long-range socio-economic trends and high-priority funding areas as a means for determining the socio-economic status of a community, the department supports these and possibly other considerations as a part of the comprehensive socio-economic review.

d. Non-Point Source Controls

The District states that non-point source controls should only be considered in an antidegradation review when these controls are part of a "lawfully-enacted regulatory scheme", nor should these considerations cause a delay in the issuance of permits to point-source discharges.

Department Response: Nonpoint source projects will only be considered when the projects have been approved as part of a funding program administered by the department and are designed to control the same pollutant(s) to be discharged by the proposed new or expanded point source. While the nonpoint source project may not be required by law or regulation, the department has responsibility to ensure the proper implementation of these state or federally-funded projects and to administer an efficient and effective program for controlling water pollution. Comprehensive control of pollutants relies on coordination between various point and nonpoint sources that share the same pollutant of concern. Examples of pollutants commonly seen from both point and nonpoint sources that may require a comprehensive management effort include bacteria, nutrients and sediment. The AIP supports efficient, effective and comprehensive water quality management by requiring the department to properly oversee the nonpoint source projects while reviewing new or expanding permits on point sources. No delay to the issuance of permits on point source discharges are expected from this effort.

e. General Permits

The District supports the department's approach to applying the antidegradation policy to general permits and requests the establishment of a separate workgroup to discuss revisions necessary to the general permits at template renewal.

Department Response: Generally, the department intends to reopen the general permits (GPs) at renewal and explore options at that time, *with stakeholders*, to incorporate the requirements of the AIP. For example, for land disturbance permits, the department will identify Best Management Practices (BMPs) for typical land disturbance scenarios that satisfy the three parts of the alternative analysis, i.e. practicability, economic efficiency and affordability. Those BMPs that are identified as measures that usually meet these criteria will be expected to be used at the permitted site. The basic premise is that the use of these BMPs will represent the highest level of pollution control generally accepted as practicable, economically efficient and affordable. The department will also explore the option of establishing a set of different GPs if needed to address scenarios (such as in sensitive watersheds) where a different set of BMPs are needed to satisfy the criteria of the alternatives analysis. Whatever approach is developed, the department will want to retain the ability to offer a GP without subjecting the permit to further technical review or public participation following the receipt of an application. Otherwise, the benefits of the GP procedure would be greatly compromised if not completely eliminated.

f. 401 Water Quality Certifications

The District supports the department's approach to applying the antidegradation policy to 401 certifications.

Department response: The department appreciates the District's support of our approach.

g. Appeals

The District requests that the AIP support an opportunity to appeal the department's *preliminary* decision based on an antidegradation review if such decision was made well in advance of a decision on a permit application. The District also requests a review of the AIP by the department after one year from its effective date and that the department make any modifications deemed necessary from the review.

Department Response: The AIP currently supports a review by the director of the department of any preliminary antidegradation decision by the program with which the applicant disagrees. The purpose of this opportunity is to allow the applicant to address any disagreement promptly following the antidegradation review by the department. While the District offered alternative language for this section of the AIP, the current language in the AIP appears to satisfy the District's request.

The AIP, along with all other parts of the water quality standards, will be reviewed for needed modifications during the next Triennial Review required by 40 CFR 131.20(a). The next review is a scheduled during calendar years 2009 through 2011. Unless extremely urgent, the department will propose needed modifications to the AIP in conjunction with the modifications identified for the other sections of the standards. Combining all of the modifications identified during a Triennial Review is less burdensome to the department and to the stakeholders involved in the standards development.

Thank you for your detailed comments and for participating in the development of the AIP. I sincerely hope the department's responses are satisfactory in providing the clarification or verification you desired. If you have any questions, please contact me at (573) 751-6770 or by mail at P.O. Box 176, Jefferson City, Missouri 65102.

Sincerely,

WATER PROTECTION PROGRAM

Signed by Phil Schroeder

Philip A. Schroeder, Chief
Water Quality Monitoring and Assessment Section

PAS:lsm